

BRYAN A. MERRYMAN (SBN 134357)  
J. JONATHAN HAWK (SBN 254350)  
WHITE & CASE LLP  
633 W. Fifth Street, Suite 1900  
Los Angeles, CA 90071-2007  
Telephone: (213) 620-7700  
Facsimile: (213) 452-2329  
Email: bmerryman@whitecase.com  
Email: jhawk@whitecase.com

BIJAL VAKIL (SBN 192878)  
JEREMY OSTRANDER (SBN 233489)  
WHITE & CASE LLP  
5 Palo Alto Square, 9th Floor  
3000 El Camino Real  
Palo Alto, CA 94306  
Telephone: (650) 213-0300  
Facsimile: (650) 213-8158  
Email: bvakil@whitecase.com  
Email: jostrander@whitecase.com

Attorneys for Defendant  
GROUPME, INC.

[ADDITIONAL COUNSEL LISTED ON  
SIGNATURE PAGE]

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION**

BRIAN GLAUSER, individually and on behalf  
of a class of similarly situated individuals,

Plaintiffs,

v.

TWILIO, INC., a Delaware corporation; and  
GROUPME, INC., a Delaware corporation,

Defendants.

NO. 4:11-cv-02584-PJH

**JOINT STATUS REPORT**

Complaint Filed: May 27, 2011  
Judge: Hon. Phyllis J. Hamilton

Pursuant to the Court's January 27 and March 15, 2012 Orders, Defendants GroupMe, Inc. ("GroupMe") and Twilio, Inc. ("Twilio"), and Plaintiff Brian Glauser (collectively, the "Parties") hereby submit the following Joint Status Report.

### **JOINT STATUS REPORT**

Plaintiff filed his putative Class Action Complaint on May 27, 2011, asserting a claim against GroupMe and Twilio for alleged violations of the Telephone Consumer Protection Act of 1991 ("TCPA"). Class Action Complaint, Dkt. No. 1 (filed May 27, 2011). Plaintiff filed his Amended Class Action Complaint on September 15, 2011. Amended Class Action Complaint, Dkt. No. 34 (filed Sept. 15, 2011). Twilio and GroupMe filed separate motions on September 29 and October 6, 2011, respectively, in part, to stay the case. Plaintiff opposed both motions.

On January 27, 2012, the Court granted the separate motions of GroupMe and Twilio to stay this case pursuant to the primary jurisdiction doctrine. Order Granting Motions to Stay, Dkt. No. 73, at 1 (filed Jan. 27, 2012). The Court's January 27 Order stated that "the parties shall file a joint status statement every six months, triggered from the date of this order, to advise the court as to the status of the two matters currently before the FCC, or sooner, should the FCC resolve either or both issues prior to the expiration of the six month period." *Id.* at 5.

Since the Court issued its January 27 Order, the FCC concluded one of those proceedings -- its 2010 Notice of Proposed Rulemaking ("2010 NPRM"). Plaintiff notified the Court of the conclusion to that proceeding by filing Plaintiff's February 27, 2012 Notice of Decision by the Federal Communications Commission, which requested the Court lift its stay. Dkt. No. 74 (filed Feb. 27, 2012), Ex. 1 (*In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, GC Dkt. No. 02-278, February 15, 2012). GroupMe opposed Plaintiff's request to lift the stay. Defendant GroupMe, Inc.'s Opposition to Plaintiff's Administrative Motion to Lift Stay ("Opp. to Admin. Mtn."), Dkt. No. 75, at 3-4 (filed Mar. 2, 2012). The Court denied Plaintiff's request. Order, Dkt. No. 76, at 1 (filed Mar. 15, 2012) (holding that "the Court is not inclined to lift the stay as to one defendant but not the other," and "because one of the reasons for the stay pertains to the liability of co-defendant Twilio and the petition on that issue still remains before the FCC, the stay remains in effect."). The Court held

1 that “the stay remains based solely on the remaining of the two grounds for its initial imposition.”  
2 Order, Dkt. No. 76, at 1.

3 The Club Texting Petition, for which the FCC issued a Public Notice Seeking Comment  
4 before the hearing on GroupMe and Twilio’s respective motions to stay, remains pending before  
5 the FCC as of the date of this Joint Status Report, *i.e.* unchanged since the Court’s March 15,  
6 2012 Order denying Plaintiff’s request to lift the stay.

7 On March 1, 2012, GroupMe filed its Petition for Expedited Declaratory Ruling and  
8 Clarification with the FCC, asking the Commission to clarify which machines constitute  
9 “automatic telephone dialing systems” under the TCPA, and what it means for a machine to have  
10 the “capacity” to auto-dial. Opp. to Admin. Mtn., Dkt. No. 75, Ex. A (*GroupMe, Inc.’s Petition*  
11 *for Expedited Declaratory Ruling and Clarification*). GroupMe’s Petition further asked the FCC  
12 to clarify that a caller can obtain “oral prior express consent” to make “non-telemarketing,  
13 informational calls or text messages to wireless numbers . . . rely[ing] on a representation from an  
14 intermediary that they have obtained the requisite consent from the called party.” *Id.* GroupMe  
15 informed the Court of its Petition on March 2, 2012, in conjunction with its opposition to  
16 Plaintiff’s request to lift the stay. *Id.* The Court’s March 15 Order stated that “[i]f GroupMe’s  
17 petition for expedited declaratory ruling and clarification is acted on during the period of the stay,  
18 the parties shall bring it to the court’s attention; however, the instant ruling is not based on  
19 GroupMe’s filing of the subsequent petition. For now, the stay remains based solely on the  
20 remaining of the two grounds for its initial imposition.” Order, Dkt. No. 76, at 1.

21 On July 24, 2012, the FCC issued a Public Notice Seeking Comment on the issues  
22 presented in GroupMe’s Petition. Ex. A hereto (*FCC Consumer and Governmental Affairs*  
23 *Bureau Seeks Comment on Petition for Expedited Declaratory Ruling from GroupMe, Inc.*)  
24 (“Public Notice”). The Public Notice states that Comments are due by August 30, 2012 and  
25 Reply Comments are due by September 10, 2012. *Id.*

26 Respectfully submitted,

27 Dated: July 27, 2012

**EDELSON MCGUIRE LLC**

28 By: /s/ Christopher L. Dore

WHITE & CASE LLP  
633 W FIFTH STREET, SUITE 1900  
LOS ANGELES, CA 90071-2007

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SEAN REIS - SBN 184044  
(sreis@edelson.com)  
EDELSON MCGUIRE LLP  
30021 Tomas Street, Suite 300  
Rancho Santa Margarita, California 92688  
Tel: (949) 459-2124  
Fax: (949) 459-2123

RAFEY S. BALABANIAN (Admitted *Pro Hac Vice*)  
(rbalabanian@edelson.com)  
CHRISTOPHER L. DORE (Admitted *Pro Hac Vice*)  
cdore@edelson.com  
EDELSON MCGUIRE, LLC  
350 North LaSalle Street, Suite 1300  
Chicago, Illinois 60654  
Tel: (312) 589-6370  
Fax: (312) 589-6378

Attorneys for Plaintiff BRIAN GLAUSER

Dated: July 27, 2012

**WHITE & CASE LLP**

By: /s/ Bryan A. Merryman  
BRYAN A. MERRYMAN (SBN 134357)  
J. JONATHAN HAWK (SBN 254350)  
WHITE & CASE LLP  
633 W. Fifth Street, Suite 1900  
Los Angeles, CA 90071-2007  
Telephone: (213) 620-7700  
Facsimile: (213) 452-2329  
Email: bmerryman@whitecase.com  
Email: jhawk@whitecase.com

JEREMY OSTRANDER (SBN 233489)  
WHITE & CASE LLP  
5 Palo Alto Square, 9th Floor  
3000 El Camino Real  
Palo Alto, CA 94306  
Telephone: (650) 213-0300  
Facsimile: (650) 213-8158  
Email: jostrander@whitecase.com

Attorneys for Defendant GROUPME, INC.

Dated: July 27, 2012

**GOODWIN PROCTOR LLP**

By: /s/ Patrick S. Thompson  
PATRICK S. THOMPSON  
AUDREY M. LIN  
GOODWIN PROCTER LLP  
Three Embarcadero Center, 24th Floor,  
San Francisco, CA 94111  
415-733-6000  
Fax: 415-677-9041  
Email: pthompson@goodwinprocter.com

WHITE & CASE LLP  
633 W FIFTH STREET, SUITE 1900  
LOS ANGELES, CA 90071-2007

Attorneys for Defendant TWILIO, INC.

**DECLARATION OF SERVICE**

I, J. Jonathan Hawk, declare as follows:

I am employed in the County of Los Angeles in California. I am over the age of eighteen years and am not a party to this action. My business address is 633 West Fifth Street, Suite 1900, Los Angeles, California, 90071. On July 27, 2012, I served the document titled:

**JOINT STATUS REPORT**

to all named counsel of record via the ECF (Electronic Case Filing) system of the United States District Court for the Northern District of California. All counsel of record are required to be registered e-filers and, as such, are automatically e-served with a copy of the documents upon confirmation of e-filing.

I certify under penalty of perjury under the laws of the state of California and the United States that the foregoing is true and correct.

Dated: July 27, 2012

/s/ J. Jonathan Hawk  
J. Jonathan Hawk

WHITE & CASE LLP  
633 W FIFTH STREET, SUITE 1900  
LOS ANGELES, CA 90071-2007

**DECLARATION OF J. JONATHAN HAWK**

I, J. Jonathan Hawk, am one of the attorneys of record for Defendant GroupMe, Inc. Christopher L. Dore, attorney of record for Plaintiff Brian Glauser, and Patrick S. Thompson, attorney of record for Defendant Twilio, Inc., gave me concurrence in the filing of the document titled "JOINT STATUS REPORT," which concurrence shall serve in lieu of their signatures on that filed document. I have obtained and will maintain records to support this concurrence for subsequent production for the Court if so ordered or for inspection upon request by a party until one year after final resolution of the action (including appeal, if any).

Dated: July 27, 2012

WHITE & CASE LLP

By: /s/ J. Jonathan Hawk  
J. Jonathan Hawk  
Attorneys for Defendant GroupMe, Inc.

WHITE & CASE LLP  
633 W FIFTH STREET, SUITE 1900  
LOS ANGELES, CA 90071-2007